United Nations A/69/387

General Assembly

Distr.: General
23 September 2014

Original: English

**Sixty-ninth session**
Agenda item 68 (a)
**Promotion and protection of human rights: implementation of human rights instruments**

# Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*

## Note by the Secretary-General

*Summary*

The Secretary-General has the honour to transmit the interim report of the Special Rapporteur of the Human Rights Council on torture and cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, submitted in accordance with General Assembly resolution 68/156.

In the present report, the Special Rapporteur addressed the key role forensic science plays regarding the obligation of States to effectively investigate and prosecute allegations of torture or other cruel, inhuman or degrading treatment or punishment. He elaborated on existing standards and guidelines on how effective legal and medical investigations into allegations of torture and other ill-treatment should be conducted, practical challenges observed during country visits and the basic requirements for an effective implementation of those standards. Furthermore, the Special Rapporteur elaborated on the role of forensic evidence in legal proceedings and on how to promote medical documentation of torture and other ill-treatment and the application of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

* Late submission.

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# I. Introduction

1. The present report, submitted pursuant to paragraph 47 of General Assembly resolution 68/156, is the sixteenth report submitted to the General Assembly by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

2. The Special Rapporteur wishes to draw attention to the reports submitted to the Human Rights Council (A/HRC/25/60 and Add. 1 and 2).

# II. Activities related to the mandate

## A. Country visits

3. The Special Rapporteur has conducted a country visit to Mexico from 21 April to 2 May 2014.

4. The Special Rapporteur regrets that the country visit planned for the Gambia from 12 to 18 August 2014 was postponed by the Government at very short notice. He welcomes, however, new dates suggested by the Government and hopes to secure this visit for early November 2014. He regrets the second postponement of his visit to Thailand, but remains engaged with the Government to secure new dates for a visit in the first half of 2015.

5. The Special Rapporteur welcomes the invitation and confirmation from the Governments of Brazil and Georgia to conduct country visits in 2015 and awaits confirmation of the specific dates.

6. The Special Rapporteur has insisted on an invitation of the Government of the United States of America to visit the detention centre at Guantánamo Bay, Cuba, on conditions that he can accept. His request to visit United States prisons on the mainland is still pending.

7. The Special Rapporteur, with support from his Anti-Torture Initiative project, conducted follow-up visits to Tajikistan and Tunisia in February and June 2014, respectively. He welcomes the Governments' openness to engage with his mandate on the implementation of his recommendations. The Special Rapporteur is planning to engage in follow-up activities in 2015 with the Governments of Morocco, Ghana and Mexico.

## B. Highlights of presentations and consultations

8. Between 10 and 12 March 2014, the Special Rapporteur presented his reports (A/HRC/25/60 and Add. 1 and 2) to the Human Rights Council and participated in side events on the theme "The ongoing revision process for the standard minimum rules for the treatment of prisoners"; "Human rights violations against persons with albinism"; "Challenges and achievements in the struggle for the prevention of torture in places of detention" and "Body searches and inhuman treatment of prisoners".

9. On 13 March 2014, the Special Rapporteur delivered the annual lecture on the theme "Mental health in juvenile detention" at the Children's Law Centre in Belfast, United Kingdom of Great Britain and Northern Ireland.

10. On 27 March 2014, the Special Rapporteur participated in a discussion on the theme "Torture, international law and the fight against terrorism" at City College of New York, in the United States.

11. On 10 and 11 April 2014, the Special Rapporteur delivered the keynote address at the Organization for Security and Cooperation in Europe (OSCE) Supplementary Human Dimension Meeting on Prevention of Torture in Vienna.

12. On 15 April 2014, the Special Rapporteur received the prestigious human rights award from the NGO Death Penalty Focus, in Los Angeles, United States.

13. On 8 May 2014, the Special Rapporteur delivered a video keynote address marking the first National Day against Torture in Tunis.

14. On 22 May 2014, the Special Rapporteur participated in a conference on universal jurisdiction at the Fundación Baltasar Garzon, in Madrid.

15. On 26 June 2014, the Special Rapporteur launched a social media campaign to mark the United Nations International Day in Support of Victims of Torture.

16. On 19 June 2014, the Special Rapporteur delivered a speech on torture and other ill-treatment in psychiatric institutions at the German Association for Psychiatry, Psychotherapy and Psychosomatics in Berlin.

17. On 25 August 2014, the Special Rapporteur, through his Anti-Torture Initiative project, published a volume entitled *Next Steps Towards a Human Rights Penitentiary System in Uruguay: Reflections on the Implementation of the 2009 and 2013 Recommendations of the United Nations Special Rapporteur on Torture!*.

18. On 3 September 2014, the Special Rapporteur attended the Convention against Torture Initiative Forum in Geneva.

# III. Role of forensic and medical sciences in the investigation and prevention of torture and other ill-treatment

## A. Overview

19. All States have a clear obligation to investigate acts of torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment). This is one obligation in the much broader legal framework of the fight against torture, including prevention, accountability and redress. Forensic science has a key role to play regarding the obligation of States to investigate and prosecute allegations of torture or other ill-treatment, especially with regard to individual responsibility and the fight against impunity. Effective medical and forensic documentation[1] can bring evidence of torture and other ill-treatment to light so that perpetrators may be held

[1] Forensic evaluations are thorough assessments of physical and/or psychological evidence for legal proceedings. Medical evaluations may include initial compulsory medical assessments (physical and/or psychological) with or without allegations of torture and/or ill-treatment, or medical examinations for health concerns. For purposes of the present report, the term "forensic evidence" is the admissible authoritative report based on scientific evidence produced by medical, psychiatric/psychological and forensic anthropology experts.

accountable. Forensic specialists provide expert analysis of whether there is a correlation between the medical evidence and the allegations and can provide the evidentiary basis on which prosecutions can successfully be brought against those directly responsible and their superiors. Medical records can be instrumental in overcoming the otherwise lack of objective evidence with which survivors of torture are so commonly confronted, given that torture mostly takes place without witnesses. The work of a forensic scientist is germane to the efforts to address impunity for acts of torture, as the expert opinion forms the evidential basis for prosecution of allegations of torture. Similarly, the corroborative effect of this professional opinion, and its role in assessing the overall credibility of alleged victims, provides a stronger basis for prosecutions. This does not only increase the chance of a successive prosecution; but also enhances the possibility to receive immediate medical and other assistance and, in the longer term, other forms of redress and reparation. Similarly, scientific evidence may help in assessing whether incriminating statements were made under torture and should therefore be excluded at trial, and assist States to fulfil their obligations towards non-refoulement, reparations and rehabilitation.

20. During fact-finding missions, the Special Rapporteur has observed that States are reluctant to carry out criminal investigations into torture allegations and accurate statistics on the incidence of torture are difficult to obtain. The lack of investigation, together with the lack of accountability, perpetuates the practice of torture and other ill-treatment. Scientific evidence obtained by thorough, impartial and independent forensic evaluations assists States to comply with their obligation systematically to investigate, prosecute and punish each incident of torture, and plays a major role in preventing future acts of torture by fighting impunity and holding perpetrators accountable. This report is about forensic "medical" science and its value in fulfilling the obligations attached to the prohibition of torture in international law. The Special Rapporteur is aware that forensic science encompasses also other disciplines and technologies and methods, such as ballistics, graphology, crime scene investigations, among others. Several of those other forensic sciences can also aid in the investigation and prevention of torture and its redress; medical forensics, however, are both central to the effective application of the international law on torture and sorely lacking or neglected in many parts of the world. Enhancement of all forensic capabilities — but especially legal medicine — would result in much better and more humane ways to fight crime of any sort, and would go a long way to abolishing torture. The focus of this report is to urge improvements in the quality of investigations through effective documentation of evidence of torture, to establish standards for the effective use of expert forensic evidence in legal investigations, including procedural safeguards, and to urge sharing of scientific knowledge and technological advances.

## B. Legal framework

### 1. Key provisions of international human rights law

21. International law provides for absolute and non-derogable prohibition of torture and other ill-treatment.[2] The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment envisages three main

[2] See, for example, Universal Declaration of Human Rights, art. 5; International Covenant on Civil and Political Rights, art. 7; and Convention against Torture, art. 1.

pillars in the fight against torture, which are the obligation of States to ensure justice and to prevent and to redress all acts of torture. The obligation to investigate is central to the realization of all three main pillars. The evidence collected during investigations may form the basis for civil, administrative and criminal proceedings seeking justice; it may support claims made under the exclusionary and non-refoulement rules; and it may help assess victims' claims for reparation. Lastly, thorough investigation is necessary to ensure that official bodies and the general public can monitor and be made aware of such practices in order to prohibit them and encourage reform.

### 2. Obligation to investigate

22. Under article 12 of the Convention against Torture, States are obliged to undertake an effective investigation whenever there are indications of torture or other ill-treatment, even without an express or formal complaint. Such an approach should be followed whether or not the victim bears visible external injuries. Allegations of torture and other ill-treatment should be admitted at any stage of the trial and courts are obliged to launch ex officio investigations whenever there are reasonable grounds to suspect torture or ill-treatment.

23. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has held that, for an investigation to be "effective", it must be prompt, impartial, independent and thorough (comprehensive).[3] Since 1999, the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)[4] has become a crucial instrument and important source for investigating allegation of torture and other ill-treatment, as it both reflects existing obligations of States under international treaty and customary international law and sets out specific guidelines on how effective legal and medical investigations into allegations of torture and other ill-treatment should be conducted. It is the first set of international standards and guidelines for health and legal professionals on how to recognize and document symptoms of torture for use as evidence in court cases.[5] The Protocol provides for verification of allegations of torture and other ill-treatment. It also contains a series of "Istanbul Principles" that contain minimum standards for State adherence to ensure effective investigation and documentation of torture and other ill-treatment.[6]

24. It is important to note that States have an obligation to investigate in full compliance with the Istanbul Protocol as a procedural obligation, to ensure that measures taken are sufficient to determine whether torture or other ill-treatment has

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[3] See European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT standards, CPT/Inf/E (2002) 1-Rev. 2013, chap. VII.

[4] See Office of the United Nations High Commissioner for Human Rights, Professional Training Series No. 8/Rev.1 (United Nations, sales publication No. E.04.XIV.3); see also General Assembly resolution 55/89, annex.

[5] Other relevant standards regarding forensic and medical documentation of torture and other ill-treatment: the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Minnesota Protocol) and in Security Council resolutions 1261 (1999), 1325 (2000), and 1612 (2005) and the Group of Eight Declaration on Preventing Sexual Violence in Conflict, adopted in London in 2013.

[6] See General Assembly resolution 55/89, annex, and Commission on Human Rights resolution 2000/3.

taken place and identify the perpetrator. Non-State actors, such as health professionals documenting torture and other ill-treatment are not under any such procedural obligation and may thus, depending on the circumstances, reliably document torture through less elaborate measures that those prescribed in the Istanbul Protocol. Articles 12 and 13 of the Convention against Torture expressly require prompt or immediate investigations upon receipt of complaints of torture.[7] Promptness relates not only to the time within which the investigation must be commenced, but also to the expediency with which it is conducted. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including inter alia forensic evidence. Any deficiency in the investigation that undermines its ability to establish the cause of injury or the person responsible falls foul of this standard. The European Court of Human Rights considered that the failure to secure the forensic evidence in a timely manner was one of the important factors contributing to the ineffectiveness of the investigation.[8] An impartial examination requires a competent body, independent from the alleged perpetrator, equipped with full investigative powers in order to secure evidence and establish the facts so that its findings can be brought before the authorities responsible for criminal proceedings.

### 3. Burden of proof of torture

25. There are different thresholds for the "proof" of torture.[9] The obligation to investigate acts of torture is initiated by the existence of reasonable grounds. Evidence of torture that rises to the level of "proof" in criminal proceedings (that is, beyond a reasonable doubt) should not be necessary to establish State recognition and responsibility for torture or to trigger the obligations that do not involve assigning individual guilt and punishment, such as the implementation of public policies for prevention and administrative or civil remedies, including rehabilitation. This is important because States often claim that torture and their corresponding obligations to address it do not exist because torture has never been "proven" in court.

26. Regarding the exclusionary rule (for example, article 15, Convention against Torture) and the use of torture-tainted information in judicial proceedings, in his last report to the Human Rights Council,[10] the Special Rapporteur noted with great concern that, in practice, the burden of proof on the admissibility of material obtained by torture or other ill-treatment in courts seems to lie with the defendant rather than with the State, creating a real risk that such evidence is admitted in court because the individual is unable to prove that it was obtained under torture. Being in detention makes it difficult to meet this burden and produce any forensic, medical and other evidence required by the high standards of proof in criminal proceedings. This impedes effective investigations and establishment of the facts from the start.[11] Instead, the burden is on States to prove that statements made by the accused have been given of their own free will.[12]

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[7] See also Human Rights Committee, General Comment 20, para. 14.

[8] See European Court of Human Rights, *Bati and Others v. Turkey* (app. nos. 33097/96 and 57834/00), § 134, 2004-IV.

[9] See Convention against Torture, arts. 3, 12 and 13.

[10] See A/HRC/25/60, para. 31.

[11] See A/HRC/13/39/Add.5, para. 176.

[12] See CAT/C/30/D/219/2002; CAT/C/29/D/193/2001, para. 3.4; CAT/C/RUS/CO/4, para. 21; and CAT/C/TGO/CO/1, para. 24.

27. The Special Rapporteur has also observed that often judges wrongfully establish prerequisites, such as visible or recognizable marks, before ruling that evidence obtained under torture or other ill-treatment is invalid. This is particularly worrisome in jurisdictions where there is a lack of independent medical examinations, because generally in such countries there is ample opportunity to delay authorization for an examination. Detainees are held for long periods in unacknowledged detention until the signs of torture have disappeared, instead of being promptly brought before a judge and transferred to, for instance, a pretrial detention facility. As a result, even if forensic examination might identify some signs of torture or other ill-treatment, it may fail to establish the time of the abuse or its cause.[13]

28. There is a presumption of ill-treatment in detention if an individual's injuries were not present at the time of arrest.[14] The European Court has stated in this regard that "[w]here an individual, when taken in police custody, is in good health, but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under article 3 of the European Convention".[15] Therefore, rules of evidence should reflect the difficulties of substantiating allegations of ill-treatment in custody.[16]

### 4. Medical ethics

29. According to medical ethical standards, health professionals have the obligation not to participate actively or passively in torture or other ill-treatment.[17] No obligation to a third party can override the duty to protect the individual from torture or other ill-treatment and to report such cases.[18] The World Medical Association has held that health professionals should be made aware of their ethical obligations, including the need to report torture and other ill-treatment, to maintain confidentiality and to seek the consent of victims prior to examination. Victims must

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[13] See A/HRC/22/53/Add.1, para. 55.

[14] See CAT/C/CR/29/1, para. 4 (a); see European Court of Human Rights, *Aksoy v. Turkey* (app. no. 2198793), 18 December 1996, para. 61.

[15] See European Court of Human Rights, *Tomasi v. France*, Series A No. 241-A, and European Court of Human Rights, *Selmouni v. France* (app. no. 25803/94), 28 July 1999.

[16] See European Court of Human Rights, *Mammadov (Jalaloglu) v. Azerbaijan* (app. no. 34445/04), 11 April 2007, paras. 60-67.

[17] See World Medical Association Declaration of Tokyo, setting out the Guidelines for Physicians Concerning Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment (1975); the World Medical Association Declaration of Geneva: International Code of Medical Ethics; the World Medical Association Declaration of Hamburg concerning Support for Medical Doctors Refusing to Participate in, or to Condone, the Use of Torture or Other Forms of Cruel, Inhuman or Degrading Treatment (1997); the World Medical Association Resolution on the Responsibility of Physicians in the Documentation and Denunciation of Acts of Torture or Cruel or Inhuman or Degrading Treatment (2003); and the United Nations Principles of Medical Ethics Relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

[18] See United Nations Standard Minimum Rules for the Treatment of Prisoners; the United Nations Rules for the Treatment of Women in Prison (the Bangkok Rules); the World Medical Association Declaration of Malta on Hunger Strikes; the World Medical Association Declaration of Edinburgh on Prison Conditions and the Spread of Tuberculosis and Other Communicable Diseases (2011).

be fully informed, in words they can understand, about the risks and benefits of reporting allegations of torture and other ill-treatment to the relevant authorities and consent to it. The Association has consistently reiterated its policy on the responsibility of physicians to denounce acts of torture or cruel, inhuman or degrading treatment or punishment of which they are aware. It urges national medical associations to speak out in support of these fundamental principles of medical ethics and to investigate any breach of these principles by their members.

30. The Special Rapporteur notes with concern that in cases where prison medical staff, including doctors under prison authorities, report allegations of torture to prison officials before reporting to the judiciary, there is inadequate protection of the alleged victim. In order to sufficiently guarantee confidentiality and protection, medical reports of detainees reporting possible cases of torture or other ill-treatment are the property of the detainee and should be addressed directly to the judge, prosecutors or other independent body according to national rules and only with alleged victim's prior and informed consent.

## C. Forensic and medical documentation of allegations of torture and other ill-treatment

### 1. Practical challenges

31. The Special Rapporteur has documented a number of practical challenges and obstacles to the effective investigation and documentation of torture and other ill-treatment. Torture may cause physical injury such as broken bones and wounds that heal slowly, or may leave no physical scars. Torture often takes place in secret, behind closed doors where there are no witnesses, and many torture methods used are becoming increasingly sophisticated and designed to be as painful as possible without leaving physical marks. These methods comprise, inter alia, asphyxiation; electric shocks; sleep deprivation; exposure to extreme temperatures; and stress positions. Making persons stand, kneel or crouch in an uncomfortable position for hours on end is unlikely to leave clearly identifiable traces. Even blows to the body may leave only slight physical marks, difficult to observe and quick to fade. The same applies when the torture is predominantly of a psychological nature, such as sexual humiliation and threats to the life or physical integrity of the person detained or of his or her family. Often torture will lead to psychological scars such as an inability to trust, social withdrawal, feelings of emptiness or hopelessness, a loss of core beliefs and values, alienation, shame and guilt, and a sense of being permanently damaged. Additionally, the victim may show psychophysiological consequences (intrusive and avoidance symptoms, hyper alertness) grouped under the concept of Post-Traumatic Stress Disorder. As such, torture methods that leave no traces do constitute an additional challenge to hold perpetrators accountable. Victims of such practices find it much more difficult to obtain recognition of their suffering and to initiate investigations.

32. During country visits, the Special Rapporteur observed that especially allegations of torture in police custody are extremely difficult for the victim to substantiate if he or she has been isolated from the outside world, without access to doctors, lawyers, family or friends who could provide support and assemble or access the necessary evidence. In a number of States there are no routine medical examinations by qualified medical doctors at the police investigation stage, by court

order or upon admission to prison, as required in the Body of Principles and expanded upon in the Istanbul Protocol.[19] He also observed that records of medical examinations upon arrest or transfer are often non-existent and recourse to forensic expertise is at the discretion of the police, prison guard, prosecutor or judge and is usually denied. Private forensic examinations are simply unavailable to most detainees for lack of resources or because competent private expertise is non-existent in the community. In addition, modern forensic tests that could corroborate the victims' reports and secure evidence are almost never available. Fear of reprisals against themselves or their families often leads victims of torture to deny or hide this reality. It is therefore important to address the disadvantage in which torture victims find themselves, in the light of the traumatizing experience of torture and the isolation experienced in police custody or prison settings.

33. When medical examinations are legally permitted by investigators, prosecutors or penitentiary authorities, these authorities have ample opportunity to delay action so that any injuries have healed by the time such an examination is conducted. During country visits the Special Rapporteur observed that the practice of judges or prosecutors promptly ordering a medical examination on their own initiative or in response to indications of abuse is rare.

34. On many occasions, torture may result in the death of the victim. The Special Rapporteur observed that in autopsy reports forensic doctors often only refer to the cause of death. The application of the Istanbul and Minnesota Protocols when performing forensic autopsies would contribute to proper documentation and detection of torture and other ill-treatment. He encourages the use of the Istanbul and Minnesota Protocols and the adoption of medico-legal documentation as routine practice in all circumstances where the events indicate torture or other ill-treatment.

35. As observed by the Special Rapporteur, unaccountability is often the result of there being available only very basic levels of expertise in forensic services, and sometimes their non-existence, which means that medical examinations, if carried out at all, are conducted by poorly trained doctors or nurses. In general, there is a shortage of qualified forensic experts regarding torture or other ill-treatment. In some countries, the education and specialization of forensic professionals includes training in the examination of alleged torture victims, but if the violations are widespread, these experts cannot adequately address the needs.

36. During country visits, the Special Rapporteur has reviewed samples of medical certificates by State health experts and forensic assessments and found the majority of those reviewed of very poor quality and accuracy, not performed in accordance with the minimum international standards for clinical forensic assessment of victims, and unacceptable as forensic evidence. The Special Rapporteur emphasizes that the description and documentation is important, not only the initial medical examination itself. Thus, the interpretation of the initial findings can be done by a more qualified expert as long as an appropriate medical examination has been conducted. Examinations made under less than optimal adherence to standards should still be considered in evidence, as long as they are conducted in good faith and under conditions of independence, and are impartial and thorough.

37. In many jurisdictions, the forensic services are closely linked with law enforcement agencies and criminal forensic investigations are undertaken in-house

[19] See A/HRC/22/53/Add.2, para. 34.

by police services. If medical staff, including forensic doctors, serve under law enforcement or security agencies or the prison sector, they are under the same employer as the officers in charge of interrogating and holding detainees. They may have conflicted loyalty between their employer and their professional obligation to report torture or ill-treatment, out of fear of jeopardizing their employment or other reprisals. In the context of allegations of torture or other ill-treatment, the provision of forensic services from within the police force and lack of independent oversight has been criticised by the Special Rapporteur on previous occasions and the mandate has recommended that systems be reorganised to ensure independence from the police. In addition, in those cases, it should be mandatory to submit the person to an independent assessment, external from prison medical services.

### 2. Implications for effective implementation

*Basic requirements*

38. An effective forensic evaluation must include both medical documentation of all findings and an expert opinion on the specific nature of the symptoms, their origin and consistency with concrete allegations. The health care professional's duty is to provide an independent opinion on the allegations together with any corroborating medical evidence. Reports should include the circumstances of the interview, a detailed record of the subject's story given during the interview, all reported physical and psychological symptoms, records of physical and psychological examination, findings on clinical examination, appropriate diagnostic tests and, where possible, colour photographs of all injuries. The opinion part of the report should point to the probable relationship between the physical and psychological findings and possible torture or other ill-treatment. Authorship of the report must be noted.

39. Therefore, where a detainee or any other person alleges torture or other ill-treatment or where there is reason to believe that torture or other ill-treatment has happened, alleged victims should be given an immediate examination by a doctor who can make an accurate report without interference by the authorities. Forensic evaluation must conform to established standards of medical practice, be undertaken only with prior informed consent, conducted in private and take full account of the victim's statements. The undertaking of such evaluation should not be dependent on the initiation of an official investigation or subject to prior authorization by an investigating authority.[20] Furthermore, the right to request an independent medical evaluation should also extend to members of the detainee's family and other bodies designated to receive complaints. In cases of death in custody, the deceased's family and, in their absence, other interested parties, must have the right to request an autopsy to be performed by an independent health professional of their choice.

*Detention screening and documentation system*

40. In order to effectively detect and document torture and other ill-treatment in places of detention, there must be a system of routine medical screenings at entry, periodically during incarceration, at exit, at all transfers and upon request. Such screenings must be capable of identifying both physical and psychological

[20] See European Court of Human Rights, *Mammadov (Jalaloglu) v. Azerbaijan*, 2000, para. 74; see also CPT standards, para. 30.

symptoms that may indicate that torture or other ill-treatment has taken place. Where the screenings identify such symptoms, a full article 12 Convention against Torture investigation must be conducted, including by offering the detainee an immediate full forensic evaluation in accordance with the Istanbul Protocol. It is essential that the detainee meet the forensic expert in a setting that is free of any surveillance or pressure and that the evaluation takes place in full confidentiality. The Special Rapporteur reiterates that it is of utmost importance that prison authorities, police, military and prison health professionals provide medical reports in a timely manner.

*Resources*

41. The Special Rapporteur notes that Governments often argue that a high standard of forensic evidence is out of the reach of States with limited resources. The Special Rapporteur agrees that good forensics are resource-intensive, but that does not justify not investing at all resource-poor States or areas. As already noted, many symptoms attributable to torture or other ill-treatment are not physical. In those cases, psychological assessment displaces medical evaluation as the main source of information. Psychological detection requires adequate training and time but much less investment in infrastructure than medical forensics. In countries where there is widespread physical torture, diagnosis can rely on a careful clinical examination with special emphasis on dermatology and rheumatology, as well as traumatology, aspects. This is conducted by interviewing, observing and touching a victim without further technical assistance. The Special Rapporteur finds that if there is a need for complementary tests, photographic documentation of the injuries at different stages, as well as X-ray analysis of wounded areas, will cover documentation of the majority of cases. Blood analysis, especially for the detection of creatine phosphokinase (CPK), an enzyme expressed by various tissues and cell types that signals the destruction of muscle cells, is a good indicator of physical torture in the period ranging from 24 to 120 hours immediately after it takes place. The Special Rapporteur notes that those scientific tests are available in almost all countries and are not expensive.

42. In certain selected cases it can be necessary to conduct a computerized tomography (CT)-scan if there have been head concussions or other internal injuries. However, a thorough neurological examination can be sufficient and body CT-scans are only necessary in very severe cases and in connection with intensive care or with autopsies. CT-scanning is also available in most countries and not very costly. The only test that might not be available in some countries is electromyography (EMG), to diagnose neurological damage in the peripheral nervous system (e.g., paralysis secondary to trauma). The Special Rapporteur notes that this test is also not expensive, but it requires a neurologist or neurophysiologist to conduct and interpret the results. Properly trained personnel may be in short supply. Finally, bone scintigraphy (bone-scan), a modified X-ray test for the diagnosis of fractures that are invisible in traditional X-ray images, requires the injection of contrast in the wounded bone. This test is indicated almost exclusively in the case of the torture method known as "falanga"[21] and is neither difficult to

[21] A form of corporal punishment in which the soles (specifically the arches) of a person's bare feet are repetitively beaten with an implement.

conduct nor expensive. However, the test seems to be unavailable in a number of countries. In cases of sexual abuse, DNA detection may be required. The diagnosis of electrical lesions is also possible and methods do exist.[22]

43. The Special Rapporteur notes that the diagnosis of torture is usually not based on "high-tech" methods or cost intensive equipment and that forensic assessment of torture is less a question of financial resources than of training and commitment by the authorities to ensure effective investigation into allegations of torture. The Special Rapporteur observes that clinical exploration, and in particular psychological and psychiatric examination, blood tests with CPK and X-rays and photographic pictures cover up to 90 per cent of the needs of an effective investigation. Together with the proper documentation of findings, those techniques are inexpensive and easily available. Limited financial resources should therefore never be an excuse for the absence of forensic investigation and evidence. He also notes the importance of supporting countries where documentation is not developed or where forensic systems need reforms, through professional exchanges and sharing know-how, provided the recipient country demonstrates commitment and good faith.

*Capacity development*

44. Forensic medicine requires a continuous effort to remain abreast of new developments through ongoing training, study and reflection to provide information about previously undocumented torture situations and their physical and psychological consequences, transmit knowledge of new means of diagnosis and their potential, generate reflection on experiences arising from interventions in the field, and divulge new standards and guidelines.[23] In order to fulfil their obligation to investigate, prosecute and punish and ensure reparations for torture and other ill-treatment, there is a need for more forensic experts (including pathologists, physicians, psychiatrists, psychologists, anthropologists and archaeologists) trained to do Istanbul Protocol evaluations. Emphasis must be laid upon training of forensic professionals in the documentation of torture sequels. There are still few State and non-State forensic specialists in the world. The participation of other physicians in such training and on the examination of alleged torture victims could help tackle this problem. Teaching is thus a key factor. States must also ensure even distribution of clinicians throughout the country. Equally important is the training of judicial, prosecutorial and law enforcement professionals. Prevention and investigation of torture under the Istanbul Protocol must be part of their compulsory legal

[22] See H. K. Thomsen, "Electrically Induced Epidermal Changes: A Morphological Study of Porcine Skin After Transfer of Low-Moderate Amounts of Electrical Energy", Ph.D. dissertation (University of Copenhagen, 1984); T. Karlsmark, "Electrically Induced Dermal Changes: A Morphological Study of Porcine Skin After Transfer of Low to Moderate Amounts of Electrical Energy", *Danish Medical Bulletin*, vol. 37 (1990); L. Danielsen, T. Karlsmark, H. K. Thomsen, J. L. Thomsen and L. E. Balding, "Diagnosis of electrical skin injuries. A review and a description of a case", *American Journal of Forensic Medicine and Pathology*, vol. 12, no. 3 (1991); and H. Jacobsen, "Electrically Induced Deposition of Metal on the Human Skin", University Institute of Forensic Science, vol. 90 (1997).

[23] See Duarte Nuno Vieira, "Forensic Evidence against Torture", *TORTURE Journal on Rehabilitation of Torture Victims and Prevention of Torture*, vol. 22, supp. 1, (2012).

curriculum and offered as part of continuing professional development programmes.[24]

*Professional standards*

45. Forensic and medical reports of sufficient quality require standardized medico-legal evaluation report forms in accordance with Istanbul Protocol guidelines. They include standardized screening formats and formats for full Istanbul Protocol evaluations. Forensic experts must have unrestricted access to relevant evidence, including crime scenes, material evidence, witnesses and relevant documents, including interrogation logs and medical records.[25] In detention facilities it is important that all medical examinations are performed with audio, video and photographic equipment. Medical and psychological reports should record the identity of the health professional and the findings of the examination. The provision of forensic science services across the criminal justice system is regulated by professional and ethical standards. Associations organizing the relevant professional groups on the international and national levels can play an important role in recommending a universal model and holding their members to such standards.

46. In some countries, the Special Rapporteur has observed the use of accreditation or certification schemes. While these cannot be excluded, they should only be used as a means of initial verification that persons executing the State's obligation to investigate are qualified to undertake this responsibility. They should not be used to grant exclusive access to collect and present evidence to certain professionals, nor to evaluate expertise in relation to specific court cases. Expertise and expert evidence, including that presented by independent or non-state actors, should be assessed on the basis of their merits in cases.

## D. Role of forensic evidence in legal proceedings

47. Specialized health professionals can, through careful and thorough evaluation of physical and psychological sequelae, provide crucial medical and psychological findings and evidence that can be communicated to the judiciary and other bodies adjudicating civil, administrative and criminal matters, including claims made under the exclusionary and non-refoulement rules, and victims' claims for reparation.[26] In

[24] See C. Foley, "Combating Torture: A Manual for Judges and Prosecutors" (Human Rights Centre, University of Essex 2003)); International Rehabilitation Council for Torture Victims, "Action against torture. A practical guide to the Istanbul Protocol — for lawyers" (Copenhagen, 2009); Petur Hauksson, "Psychological evidence of torture: how to conduct an interview with a detainee to document mental health consequences of torture or ill-treatment" (Strasbourg, 2003); Redress, "Reparations before the International Criminal Court: Issues and Challenges" (London, 2011).

[25] See International Forensic Expert Group, "Statement on access to relevant medical and other health records and relevant legal records for forensic medical evaluations of alleged torture and other cruel, inhuman or degrading treatment or punishment", *TORTURE Journal on Rehabilitation of Torture Victims and Prevention of Torture*, vol. 22, supp. 1 (2012).

[26] In the United Kingdom the Medical Foundation has produced a study entitled "Body of Evidence", detailing the treatment of forensic evidence, and specifically Medico-Legal Reports, by the Upper Tribunal of the Immigration and Asylum Chamber. The report shows the correlation between favourable decisions and expert medical evidence. The weight given to expert medical evidence will depend to a great extent on the expert's expertise, experience and opportunity to investigate.

addition, forensic evaluation of victims contributes to the assessment of acute and long-term medical and psychological care and rehabilitation they require. Lastly, medical and psychological documentation can help monitor and collect statistics on torture and other ill-treatment so that official bodies and the general public are aware of torture practices in order to develop appropriate public policies to prevent torture and encourage reform.

### 1. Legal procedural framework

48. Forensic evidence is a type of expert evidence. The purpose of expert evidence is to provide the court with information based on scientific methods, the interpretation of which is outside the experience and specialized knowledge of a court. It is the task of the court to decide whether there is a need for expert evidence, to order its procurement and to establish the competency of each expert witness. Accordingly, where forensic evidence forms only part of the total factual matrix, as in most cases, the issue for a decision-maker in a criminal trial is to determine what use can and should be made of that forensic evidence.

*Standards for assessment of documentary evidence*

49. Regarding the probative value of documentary evidence, a judicial body typically examines its relevance and reliability. Once a minimum threshold of expertise is established, the expert testimony is admissible and the Court will assess whether the evidence is persuasive. The European Court of Human Rights has specifically focused on the promptness of the examination, its level of detail, and whether it could be relied on as being collected independently.[27] This entails the promptness and the surrounding circumstances of the examination, free access to medical records, and no interference by police or other State officials with the work or the independence of the medical examiner. The Special Rapporteur notes that it is the exception that victims are examined shortly after the torture actually happened. More commonly, while the victim is in custody, the State often is the only one in a position to undertake examinations and in these circumstances, examinations are frequently conducted that are neither independent nor impartial or victims are examined only after alleged victims manage to get released from detention and some even flee the country, in which case the lesions have healed, leaving no scars or only a few. Therefore, it is important for the courts to consider in assessing the reliability and relevance of documentary evidence the circumstances in which procurement of that evidence may have been affected or delayed.

*Standards for assessment of expert opinions*

50. In addition, criterion for considering an expert opinion as evidence is that the person providing the opinion is in fact an expert. If the author is accepted as an expert, the probative value of the opinion will depend on the degree of certainty that the court attaches to the opinion in comparison to the existence of supporting or

[27] See European Court of Human Rights, *Akkoc v. Turkey* (app. nos. 22947/93 and 22948/93), 10 October 2000, para. 118; see also European Court of Human Rights, *Böke and Kandemir v. Turkey* (app. nos. 71912/01, 26968/02 and 36397/03), 10 March 2009, para. 56; and Asger Kjaerum, "Desk study: combating torture with medical evidence", *TORTURE Journal on Rehabilitation of Torture Victims and Prevention of Torture*, vol. 20, no. 3, 2010.

conflicting expert opinions.[28] The process of analysis and the conclusions must be clear and logical and the expert must possess certain qualifications ensuring the rendering of an informed and reasoned conclusion.[29] As a legal principle, an expert report on torture, its relevance and reliability should be weighed and assessed in the same manner as any other evidence. Where the expertise of a witness is not in doubt, there must be clear grounds for rejecting the expert's testimony or report. However, an expert's opinion is only as relevant and reliable as the circumstances surrounding its development and the information upon which it is based. For instance, if the underlying medical and psychological documentation on which the expert's opinion is based do not appear credible, the expert's report may be given no weight. Therefore, objective supporting evidence (for example, X-rays) can be crucial in determining the reliability of the expert opinion. If an expert report is available it must be taken into account and, if rejected, reasons must be given.

### 2. Judicial consideration of medical evidence

51. During country visits, the Special Rapporteur observed that, in addition to the lack of competent forensic experts and health professionals, the legal profession often lacks capacity and knowledge to apply such evidence adequately. One reason for the low impact of forensic reports on torture is the gap between scientists and judicial authorities. Prosecutors and judges are often unable to evaluate adequately forensic evidence because of its complexity or often substitute their own reasoning for that of the expert's. This constitutes a major limitation to the effectiveness of forensic evidence and can only be eliminated through the training of judges and prosecutors on the effective forensic documentation of torture and other ill-treatment and on evidence that can be used in legal proceedings. Specifically, prosecutors and judges, as well as health professionals, must be trained on the Istanbul Protocol and other relevant materials. In addition, it is key to bring together authorities and civil society representatives with established forensic experts to promote forensic capacity-building and professional development.

### 3. Consideration of psychological evidence

52. Collection and forensic evaluation of psychological evidence involves the assessment of an individual's psychological condition and the causes thereof. The process of forensic psychological evaluation parallels the analytical process for the forensic evaluation of physical evidence: determining the consistency of allegations with the victim's experience and existing sequelae. A rigorous, extensive and intensive psychometric and psychiatric assessment can have high probative value. Moreover, the Istanbul Protocol emphasizes a comprehensive physical and psychological evaluation considered together as the forensic cornerstone to verifying a victim's allegations of torture. This comprehensive forensic evaluation and verification of allegations includes knowledge of human rights and political context, the personal biographical history, previous health records, description of the acts of torture, consistency between verbal and non-verbal communication, coherence in the events described, consistency between the events described and the emotion and resonance with which they are expressed, acute symptoms, social life

[28] See Asger Kjaerum, "Desk study: combating torture with medical evidence", *TORTURE Journal on Rehabilitation of Torture Victims and Prevention of Torture*, vol. 20, no. 3, 2010.

[29] See European Court of Human Rights, *Muradova v. Azerbaijan* (app. no. 22684/05), 2 April 2009, paras. 116-119.

and circumstances. The Istanbul Protocol should be used for assessment of allegations of torture and medico-legal reports undertaken in compliance with the standards and principles of the Protocol, including independence and impartiality, present reliable findings on torture. These medico-legal reports therefore should be considered as reliable evidence on the issue of whether torture has or has not been perpetrated. There have been noticeable positive steps towards recognition of psychological evidence as probative and integral.[30] While the European Court and the Inter-American system seem to afford an important role to psychological evidence in relation to proving allegations of torture of primary victims as well as their dependents, there is still a need for significant improvements at the national level.[31]

### 4. Exclusion of non-State experts

53. Prosecutors and courts should not be limited to evaluating reports from officially accredited experts, irrespective of their institutional affiliation.[32] Criminal procedure must ensure that reports of a non-government health professional may be accepted as evidence of torture or other ill-treatment in Court. In addition, non-State health experts should be encouraged to review State examinations and to conduct their own independent assessments; these assessments should be given the weight they deserve on their merits. Courts should neither rule out non-State experts nor award State expert testimony more weight based solely on their "official" status. Regarding required expertise, it must be determined on its merits. In that regard, independence and objectivity are a primary concern. The State will usually have more resources and be in a privileged position to examine victims. Those facts must be considered alongside the degree of independence and impartiality such experts enjoy, as well as the obstacles that non-State experts might face in gaining access to and procuring evidence. The presumption must be that the State has to account for its own action or inaction and its inability to protect the rights of persons in custody. It is the State's obligation to rebut allegations, and to show that it has conducted truly effective investigations.

### 5. Adequate representation of victims

54. International standards on the investigation of torture allegations and reports are primarily formulated as obligations of States. However, legal professionals play a crucial and active role in the documentation and investigation of torture, by, inter alia, documenting torture for use in legal proceedings and recording the failure to investigate in spite of the availability of evidence or the shortcomings of any

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[30] See European Court of Human Rights, *Salmanoglu and Polattas v. Turkey* (app. no. 15828/03), 17 March 2009, paras. 85-95; the Court rejected the entire body of State-produced physical medical evidence as unreliable and based its decision on the psychological evidence submitted by the applicant and collected in accordance with the CPT standards and the Istanbul Protocol.

[31] See N. S. Rodley and M. Pollard, *The Treatment of Prisoners under International Law* (3rd ed.) (Oxford, Clarendon Press, 2009). For observations on the evaluation of medical evidence by the European Court of Human Rights, the Inter-American Human Rights system, the African Commission on Human and Peoples Rights, United Nations treaty-based mechanisms and International Tribunals, see Asger Kjaerum, "Desk study: combating torture with medical evidence"; see also Camille Giffard and Nigel Rodley, "The Approach of International Tribunals to Medical Evidence in Cases Involving Allegations of Torture", in *The Medical Documentation of Torture*, Michael Peel and Vincent Iacopino, eds. (Greenwich Medical Media Limited, 2002).

[32] See CAT/C/TUR/CO/3 (2011), para. 8 (c).

investigations undertaken. Lawyers must assess whether the official investigation undertaken by police or other competent body took into account proper medical evidence or arrangements for independent medical examinations to attest to the victim's version of the events are needed. Understanding the physical and psychological effects of torture is vital when lawyers interview victims with a view to submitting criminal, civil or administrative claims, as well as when defending a victim of torture who was forced to incriminate him or herself under torture. Failure to raise such issues when there is prima facie evidence of ill-treatment is a breach of professional ethics and competency. Securing the services of experts to examine evidence, to advise counsel and to testify at trial is critical.

### 6. Protection against harassment

55. Too often the victim's participation in legal proceedings only generates additional distress for the torture survivor and to witnesses, lawyers and health professionals subjected to threats. Safeguards and mechanisms should be in place to enable victims, health and legal professionals to report allegations and evidence of torture and other ill-treatment in an environment free from any harassment, intimidation or retaliation and in a manner compliant with their duties of confidentiality. Courts are responsible for their protection against any threat or intimidation, since such acts compromise the integrity of the judicial process as a whole.[33]

## E. Promoting medical documentation and the application of the Istanbul Protocol

56. To promote the value and use of medical documentation of torture and broaden the level of implementation of the international standards contained in the Istanbul Protocol, a new initiative has been launched. The Istanbul Protocol Plan of Action is spear-headed by civil society organizations (the International Rehabilitation Council for Torture Victims, Physicians for Human Rights, Redress and Human Rights Foundation Turkey).[34] The Special Rapporteur supports this initiative, which seeks formal State recognition of the Istanbul Protocol so that administrative, legislative, judicial and independent human rights authorities adopt and apply the Protocol.

57. In order to ensure independence, efficiency and effectiveness of investigations and to include specialized independent institutions and national and international experts, the Istanbul Protocol refers to an "investigative authority" to investigate torture claims. Some States have specially designated divisions or departments to investigate specific crimes that have contributed to a more efficient and effective investigation.

[33] See the World Medical Association Hamburg Declaration.

[34] See www.irct.org/ipactionplan.

# IV. Conclusions and recommendations

## Conclusions

58. **Following from the State's obligation to investigate torture and other ill-treatment, the effective medical and legal investigation and documentation of torture and other ill-treatment are essential for the prevention of and accountability and redress for these crimes, as well as for the general operation of international law regarding torture. The Special Rapporteur finds that for every single right the victim has — from being free from torture in the first place to the rights after having survived torture, and even for the families of those torture victims who do not survive — documentation and evidence is the most fundamental prerequisite, and, unfortunately, one the attainments of which is too often frustrated.**

59. **States have an obligation to put in place and apply an effective process of evidence collection that accords with the Istanbul Protocol to comply with their obligation to investigate allegations of torture and other ill-treatment. The Special Rapporteur notes that adequate, extensive forensic evaluation in accordance with the Istanbul Protocol, and the effective training of health, legal and other professionals involved in documenting and investigations of torture and other ill-treatment, will positively impact the detection and prevention of torture. Properly supported cases with good quality forensic reports are revolutionizing the investigation of torture and improving outcomes. Good reports include analysis and interpretation of findings in terms of consistency with alleged events. They make clear that the absence of outward signs does not exclude the events from having happened.**

60. **There is a pressing need to step up the overall involvement of forensic medical science across the various sectors of the criminal justice cycle, and where persons are at particular risk, including administrative, pretrial and juvenile detention and psychiatric institutions. If police officers, prison wardens, hospital administrators, prosecutors and judges were under a legal obligation to request proper forensic medical examinations as a standard procedure whenever there are suspicions or allegations of torture or other ill-treatment, victims would be in a considerably stronger position. In addition to their role in prosecution, forensic medical services can also play a transforming role in prevention. As required in the Body of Principles and expanded in the standard-setting Istanbul Protocol, routine medical examinations of detainees after admission to every place of detention create a system of "checkpoints" that minimizes the number of unaccounted cases of torture and renders impossible a shifting of blame and accountability among various detention facilities and authorities.**[35]

61. **While much progress has undoubtedly been made in the past few years, in scientific advances, in medical standards and in legal norm-setting, the impact of forensic medical science is undermined by a lack of institutional independence, rigorous implementation and sufficient training. In many cases, health professionals in detention facilities have an almost exclusively therapeutic role or other staff have only basic training as paramedics; their**

[35] See A/HRC/13/39/Add.5, para. 126.

focus is on curing sick detainees and examining new arrivals for contagious diseases or obvious wounds. Since traumata caused by torture are not necessarily visible, their examinations likely miss a considerable number of torture cases.[36] The Special Rapporteur observes that there is a lack of proper in-take and exit examinations, which would detect suspected cases of torture.

62. The lack of independence and impartiality of many forensic medical services and health professionals is a key obstacle to combating impunity for perpetrators and ensuring reparations to victims. Health professionals tasked with the medico-legal evaluation of alleged victims of torture, with investigations into deaths in custody and with providing forensic evidence in criminal proceedings must enjoy organizational, institutional and functional independence from the police, judiciary, military and prison services. The law and practice must ensure that they act in full impartiality.

63. States are responsible for seeking forms of cooperation, including sharing of best practices among other similarly resource-challenged countries, to breach the gap as much as possible. States and national institutions responsible for investigating allegations of torture must be allocated sufficient resources to conduct their duties, including adequate premises, medical equipment, photographic and video equipment and access to medical investigations and imaging. In addition, there should be an adequate number of qualified health personnel (State and private).

64. The Special Rapporteur emphasizes that the evaluation of medical and psychological documentary evidence and expert opinions, including psychiatric and psychological evidence, must move towards a more systematic approach. The role of psychiatric and psychological expertise, in identification and verification of allegations, must be strengthened. The CPT and the Istanbul Protocol standards serve as a standard for evaluation of medical evidence, as a reference tool for experts delivering expert opinions, as a benchmark for assessing the effectiveness of the domestic fact-finding and as a means of redress for victims. These or similar standards must be implemented in domestic frameworks for torture investigation. Courts must accept and evaluate independently collected evidence on their merits.

65. Close collaboration between the health and legal professions is crucial in the effective investigation of alleged cases of torture and in establishing procedures on how to recognize and document symptoms of torture so that the documentation may serve as valid evidence in court.[28]

## Recommendations

66. Ensure that the fundamental principles of investigation, such as competence, impartiality, independence, promptness and thoroughness are enshrined in legislation and officially recognized among relevant departments and personnel, including prosecutors, defence attorneys, judges, law enforcement, prison and military personnel, forensic and health professionals and those responsible for detainee health care.

67. Adopt and implement the Istanbul Protocol as an investigative tool and standard.

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[36] Ibid., para. 127.

68. **Recommendations regarding the effective investigation of allegations of torture or other ill-treatment:**

(a) **Ensure that all suspicions and allegations of torture and other ill-treatment are investigated and documented in a prompt (within 24 hours), independent and transparent manner by qualified governmental and non-governmental experts; that they are conducted with victim participation at all phases of the investigation, including access to such investigations;**

(b) **Ensure that all forensic evaluations, including compulsory medical examinations in pretrial detention and the penitentiary system, are independent of law enforcement, prosecution and/or military authority; funding and supervision of such health professionals should be separate from the criminal justice system, and health professionals should have sufficient security of status and employment to ensure independence; and forensic medical services should be under the highest judicial or health services authority, not under the same governmental authority as the police and the penitentiary system;**

(c) **Ensure forensic and medical reports are of sufficient quality, thereby requiring the use of standardized medico-legal evaluation report forms that comply with Istanbul Protocol guidelines; health professionals must be guaranteed full access to all relevant documentation that may pertain to the case, including medical records, legal documents, the crime scene, witnesses and interrogation records;**

(d) **Ensure the application of the Istanbul and Minnesota Protocols when performing forensic autopsies.**

69. **Recommendations regarding safeguard for effective medical evaluations of alleged torture and other ill-treatment in detention:**

(a) **Implement a system of mandatory medical examination of detained persons, which is capable of detecting physical and psychological signs of torture and other ill-treatment at entry, transfer and exit from places of detention, including judicial remand, as well as periodically during incarceration and upon request;**

(b) **Mandate that, if the health professional has grounds for presuming the existence of torture and other ill-treatment, he or she must notify the competent authorities with the victim's consent; and refer the case for a full investigation, including full forensic evaluation in accordance with article 12 of the Convention against Torture;**

(c) **Ensure that effective access to forensic medical expertise is not subject to prior authorization by an investigating authority; this must include access to a medical professional of the detainee's choice for medical evaluation at any time during detention;**

(d) **Establish an individual's right to be evaluated by non-governmental medical experts of his or her choosing anytime during and after being in custody, including in places of detention that require security clearance;**

(e) **Ensure that prior and informed consent, be obtained from the alleged victim and include: the purpose of the evaluation, explanation of the process, how the information will be used, the right to refuse the evaluation, the**

**option to request an evaluation by a medical expert of choice and any limits on the confidentiality of the information provided in the evaluation;**

**(f) Ensure that medical experts in detention centres have unrestricted access to relevant evidence, including material evidence, witnesses and relevant legal documents, including interrogation logs and medical records;**

**(g) Ensure that all medical examinations and interviews with detainees in detention facilities are performed using audio, video and photographic equipment;**

**(h) Prohibit the transfer of medical reports to law enforcement officials except by order of and under the supervision of a judge and with the consent of the victim;**

**(i) Ensure that detainees have the right to review and have a copy of their own medical records and the right to have them transferred promptly with the detainee if she or he is moved to another facility.**

70. **Recommendation regarding cases of sexual assaults:**

**Ensure that in cases of alleged sexual assault showing no or limited physical evidence, because of passage of time or other reasons, a comprehensive physical and mental health evaluation should still be performed with special attention to behavioural and psychological evidence (see FCO sexual violence protocol).**

71. **Recommendation regarding medical ethics:**

**Ensure that all health professionals working with detainees are made aware of their ethical obligations, including the need to report torture and other ill-treatment, to maintain confidentiality and to seek the consent of victims prior to examination; and ensure that national legislation is clear that health professionals must abide by their ethical obligations at all times.**

72. **Recommendations regarding capacity-building and training:**

**(a) Raise awareness among concerned professionals and society at large on the role of documentation and its importance in broader anti-torture policies and initiatives; bring together key professionals, comprising both officials and civil society with established forensic expertise, to promote forensic capacity-building, and to develop strategies and practices on how best to document and investigate torture cases with a view to ensuring accountability and reparation;**

**(b) Enhance the skills of health and legal professionals on the effective medical documentation of torture and other ill-treatment through training on the use of the Istanbul Protocol and other relevant materials to forensic pathologists, medico-legal officers, general practitioners, psychiatrists, psychologists, Ministry of Health officials and social workers; as well as lawyers, State investigators, prosecutors, judges, prison officials, police officers, immigration officers, NGO activists, members of national human rights commissions and similar bodies, representatives of the Ministry of Justice, the Ministry of Defence and the Ministry of the Interior.**

73. **Recommendations regarding judicial recognition and evaluation of forensic evidence in cases involving torture:**

**(a) Ensure that prosecutors utilize and process medical evidence in accordance with national standards and procedures, and that prosecutors and judges order independent forensic evaluation where appropriate;**

**(b) Ensure that all evidence in court proceedings is evaluated on merits, with a specific focus on the independence and impartiality of the body collecting the evidence;**

**(c) Ensure that the Istanbul Protocol is used for verifying all allegations of torture and other ill-treatment and that the medico-legal reports undertaken in compliance with the standards and principles of the Istanbul Protocol, including independence and impartiality, are considered as reliable evidence on the issue of whether torture has or has not been perpetrated;**

**(d) Ensure that rules of evidence provide for the admission of medical and psychological reports of independent health practitioners into evidence in criminal, civil and administrative cases and that such reports are evaluated on their merits and assigned persuasive weight in that measure;**

**(e) Encourage independent health experts to review State examinations and to conduct their own independent assessments;**

**(f) Ensure that public forensic medical services do not have a monopoly on expert forensic evidence for judicial purposes;**

**(g) Institute safeguards and mechanisms to enable health professionals to report allegations and evidence of torture and other ill-treatment in an environment free from any harassment, intimidation or retaliation and in a manner compliant with their duties of confidentiality.**

**74. Recommendations regarding promoting medical documentation and the application of the Istanbul Protocol as a standard:**

**(a) Endorse and support the Istanbul Protocol Plan of Action for the effective implementation of the Istanbul Protocol;**

**(b) Establish an "investigative authority" with guarantees of independence, efficiency and effectiveness and with powers to investigate *sua sponte* allegations of torture in accordance with the Istanbul Protocol;**

**(c) Ensure that powers of the "investigative authority" are enshrined in legislation;**

**(d) Allocate sufficient budgetary and technical resources to the "investigative authority";**

**(e) For signatories of the Optional Protocol to the Convention against Torture, the National Preventive Mechanism has to include forensic expertise under the conditions mentioned in this report.**